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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,369	10/17/2003	Kevin Hoffer	005127.00571	2238

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EXAMINER
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PATTERSON, MARIE D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/688,369	<b>Applicant(s)</b> HOFFER ET AL.	
	<b>Examiner</b> Marie Patterson	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2005.  
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-21 and 23-41 is/are pending in the application.  
 4a) Of the above claim(s) 3,4,10-20,23,24 and 30-41 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1, 5-9, 21, and 25-29 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

1. Claims 3, 4, 10-20, 23, 24, and 30-41 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 3/8/05.

2. This application contains claims 3, 4, 10-20, 23, 24, and 30-41 drawn to an invention nonelected with traverse in Paper filed 3/8/05. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 7, 8, 21, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riddell (2071431) in view of either Sidles (3947979) or Hack (2930149).

Riddell shows a shoe comprising a peripheral lip (at 10) and a plurality of fins (shown at 11 in figures 1 and 2) substantially as claimed except for angling the fins rearwardly. Either Sidles or Hack teaches providing fins (13 or 20) which are angled rearwardly and which extend substantially the entire width of the sole. It would have been obvious to

provide angled fins as taught by either Sidles or Hack in the shoe of Riddell to increase traction, minimize mud clogging, increase cushioning, etc.

In reference to claims 8 and 28, Riddell as modified above shows a shoe substantially as claimed except for the exact materials. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use EVA, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

5. Claims 1, 7-9, 21, and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saurwein (4096649) in view of either Sidles (3947979) or Hack (2930149).

Saurwein shows a shoe comprising a peripheral lip (22) and a plurality of fins (24, 36, 38, 40, 42, and 44), some which extend across the width (30 and 24), some with edges angled inwardly (36, 38, 42, and 44) substantially as claimed except for angling the fins rearwardly. Either Sidles or Hack teaches providing fins (13 or 20) which are angled rearwardly and which extend substantially the entire width of the sole. It would have been obvious to provide angled fins as taught by either Sidles or Hack in the shoe of Saurwein to increase traction, minimize mud clogging, increase cushioning, etc.

In reference to claims 8 and 28, Saurwein as modified above shows a shoe substantially as claimed except for the exact materials. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use EVA, since it has been held to be within the general skill of a worker in the art to select a known

material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

6. Claims 5, 6, 9, 25, 26, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 21 above, and further in view of Sessa (5918385).

Either Saurwein or Riddell as modified above shows a shoe substantially as claimed except for an inner lip and filling between the inner and outer lips. Sessa teaches providing a plurality of peripheral lips (36a and 36c) with a recess between the lips which is partially filled by 36b). It would have been obvious to provide a plurality of peripheral lips and filling as taught by Sessa in the shoe of either Saurwein or Riddell as modified above to increase peripheral traction of the shoe.

#### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1, 5-9, 21, and 25-29 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at [www.uspto.gov](http://www.uspto.gov).

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (572)272-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.



Marie Patterson  
Primary Examiner  
Art Unit 3728